

United States District Court District of Massachusetts

UNITED STATES OF AMERICA,

v.

MAGISTRATE JUDGE'S NO.
2004-M-0486RBC-01

SHAWN WINBUSH.

ORDER OF DETENTION PENDING TRIAL

COLLINGS, U.S.M.J.

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ___ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
 - ___ a crime of violence as defined in 18 U.S. C. §3156(a)(4).
 - ___ an offense for which the maximum sentence is life imprisonment or death.
 - ___ an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Enforcement Act.
 - ___ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ___ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ___ (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).
- ___ (4) Findings Nos (1), (2) and (3) establish a rebuttable presumption that no condition or

combination of conditions will reasonable assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ___ (1) There is probable cause to believe that the defendant has committed an offense.
 ___ for which a maximum term of imprisonment of ten years or more is prescribed in
 the Controlled Substances Act
 ___ under 18 U.S.C. §924(c).
- ___ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant or the safety of the community.

Alternative Findings (B)

- x (1) There is a serious risk that the defendant will not appear.
- x (2) There is a serious risk that the defendant will endanger the safety of another person or the community if released.

Part II - Written Statement of Reasons for Detention

The defendant is charged with importing cocaine into the United States from Jamaica. He ingested the cocaine in an attempt to smuggle it into the country. The amount of cocaine he ingested is about 430 grams. The evidence against him is overwhelming; he will be convicted. He has prior drug convictions in state court dating back to the nineteen-eighties, including a charge of possession of controlled substances in a school zone in 1995. He smokes marijuana three times per week. He has convictions (3) for illegal possession of a firearms (1995). His prior record is filled with defaults. He cannot return to his residence with his wife as Third-Party custodian as the residence is Section 8 housing, and he is barred from living in such housing. Further, his wife keeps guns in the residence. The other third-party custodian suggested has an outstanding warrant in state court, making her plainly unsuitable as a third-party custodian. Although the defendant's military service is commendable, all his other circumstances lead to the conclusion that there is a serious risk that the defendant will default if released and be a danger to the community because of his activity in the drug trade.

Based on all the facts recited above, which have been proven by clear and convincing evidence, I find that there are no conditions or combination of conditions which will reasonably assure the safety of others and the community. I further find that it has been proven by a preponderance of the evidence that there are no conditions or combination of conditions which will reasonably assure the defendant's appearance.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appear. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

/s/ Robert B. Collings

ROBERT B. COLLINGS

United States Magistrate Judge

Date: November 24, 2004.